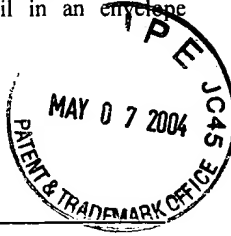


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PATENT

Attorney Docket No.: A-2-6



On May 3, 2004
By Michelle Nieely
Michelle Nieely

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent of:

Philip E. Eggers

Application No.: 09/314,247

Filing Date: May 18, 1999

Title: SYSTEM FOR TREATING
ARTICULAR CARTILAGE DEFECTS

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

)
)
) Examiner: LEE COHEN
)
) Art Unit: 3739
)
)
) COMMUNICATION
)
)
)

Sir:

The following information is being brought to the Examiner's attention pursuant to 37 C.F.R. §§ 1.555, and 1.565. This is not a patent owner's statement under 37 C.F.R. § 1.530.

As indicated in the Communication submitted December 16, 2003, ArthroCare Corporation ("ArthroCare") commenced an action on July 25, 2001, in the United States District Court for the District of Delaware against Smith & Nephew, Inc. ("Smith & Nephew") for infringement of U.S. Patent Nos. 5,697,536 ("the '536 Patent"), 5,697,882 ("the '882 Patent") and 6,224,592 ("the '592 Patent"). That action was assigned Civil Action No. 01-504-SLR (the "*Smith & Nephew* litigation"). The *Smith & Nephew* litigation proceeded to trial commencing on April 30, 2003. On May 12, 2003, the jury returned a verdict in favor of ArthroCare on infringement and validity issues with respect to all three patents. Thereafter, on June 20, 2003, the Court entered judgment on the jury's verdict.

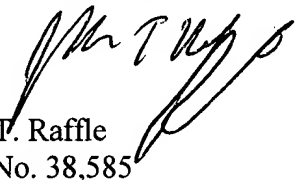
A number of post trial motions were filed on the issues of infringement, invalidity, and inequitable conduct. In particular, Smith & Nephew filed a motion for judgment as a matter of law; a motion for a new trial; a cross motion to strike ArthroCare's motion for entry of judgment of no inequitable conduct and a motion to modify the protective order. ArthroCare filed a motion for entry of judgment of no inequitable conduct and a motion for a permanent injunction.

On March 10, 2004 the Court ruled in favor of ArthroCare on all post trial motions. The Court issued a 90 page memorandum opinion: 1.) denying Smith & Nephew's motion for judgment as a matter of law; 2.) denying Smith & Nephew's motion for a new trial; 3.) granting ArthroCare's motion for entry of judgment of no inequitable conduct; 4.) denying Smith & Nephew's cross motion to strike ArthroCare's motion for entry of judgment of no inequitable conduct; 5.) granting ArthroCare's motion for a permanent injunction; and 6.) denying Smith & Nephew's motion to modify the protective order.

The Court also issued on March 10, 2004, a memorandum opinion granting ArthroCare's motion to dismiss Smith & Nephew's antitrust counterclaims.

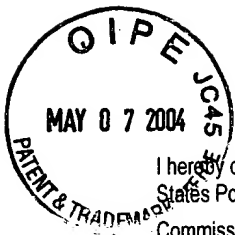
The above mentioned memorandum opinions and corresponding orders are enclosed for your consideration.¹ Should the Examiner desire any of the documents mentioned above or in the previously submitted IDS that have not been provided to the Examiner, ArthroCare shall supply them upon the Examiner's request in writing.

Respectfully submitted,


John T. Raffle
Reg. No. 38,585

ArthroCare Corporation
680 Vaqueros Avenue
Sunnyvale, California 94085-3523
(408) 736-0224

1. A portion of the memorandum opinion discussing the antitrust issues has been redacted to preserve information that is confidential.



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On

By

Michelle Nicely

PATENT

Attorney Docket No.: A-2-6

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Philip Eggers et al.

Application No.: 09/314,247

Filed: May 18, 1999

For: SYSTEM FOR TREATING
ARTICULAR CARTILAGE DEFECTS

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Examiner: Lee Cohen

Art Unit: 3739

LETTER TO OFFICIAL
DRAFTSPERSON

Sir:

This is responsive to the Supplemental Notice of Allowability, dated February 18, 2004, and the Notice of Drawing Inconsistency with Specification, dated April 1, 2004. Applicant submits Figure 25 (corrected drawing), 1 formal drawing sheet to be made of record in the above-identified application.

Respectfully submitted,

John T. Raffle
Reg. No. 38,585

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